

## Message Text

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ACTION EB-11

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INR-10 NSAE-00 RSC-01 FAA-00 IO-12 DOTE-00 SS-15

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FM AMCONSUL MONTREAL

TO SECSTATE WASHDC PRIORITY 3084

UNCLAS MONTREAL 0677

FROM US REP ICAO

E. O. 11652: N/A

TAGS: OCON, ETRN, CA

SUBJ: LEGAL SUBCOMMITTEE ON THE REVISION OF THE ROME

CONVENTION, 2 - 17 APRIL

1. DURING AFTERNOON SESSION MEETING 4 APRIL 1973, IATA OBSERVER GENERAL COUNSEL, JULIAN GAZDIK, PRESENTED PROPOSAL TO REVISE ROME CONVENTION AS FOLLOWS: A) THERE WOULD BE ESTABLISHED INTERNATIONAL STANDARDS FOR AIRCRAFT OPERATION THROUGH "GOVERNMENT PARTICIPATION" IN ANNEXES TO CHICAGO CONVENTION; B) IF AIRLINES COMPLY WITH STANDARDS, THERE WOULD BE IMMUNITY FROM LEGAL SUIT, CONSISTENT WITH PROVISION OF ARTICLE 1 OF ROME CONVENTION THAT NO LIABILITY EXISTS FROM MERE PASSAGE OF AIRCRAFT THROUGH AIR PROVIDING METHOD OF OPERATION COMPLIES WITH ESTABLISHED STANDARDS; C) IMMUNITY FROM LIABILITY WOULD EXIST FOR NUISANCE OR TRESPASS EVEN IF THERE IS DAMAGE AND EVEN IF IT IS DUE TO NON-COMPLIANCE WITH STANDARDS OF OPERATION.

COMMENT: IN ORAL PRESENTATION IT WAS SUGGESTED THAT SUCH RELIEF FROM LIABILITY FOR NUISANCE OR TRESPASS WOULD APPLY ONLY IF AIRCRAFT WERE CERTIFIED AS SATISFYING NOISE STANDARDS. THIS LIMITATION DOES NOT APPEAR IN IATA PAPER FORMALLY TABLED AND DISCUSSED NOR IN INFORMAL DOCUMENT GIVEN ALL DELS WHICH CAPTAINS SUGGESTED DRAFT LANGUAGE WITH EXPLANATORY STATEMENTS; D) THE SAME IMMUNITY SHOULD BE APPLIED TO AIRPORT OPERATORS UNDER THE UNCLASSIFIED

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TERMS OF THE CONVENTION, ALTHOUGH IT WAS RECOGNIZED THAT THIS WOULD BE DIFFICULT TO ACCOMPLISH FROM A TECHNICAL STANDPOINT; E) THERE WOULD BE ABSOLUTE LIABILITY FOR NOISE OR SONIC BOOM IF THERE IS QUOTE IMPACT UNQUOTE DAMAGE; F) THE LIMITATION OF LIABILITY PRESENTLY CONTAINED IN ROME SHOULD BE SUBSTANTIALLY INCREASED SO AS TO SECURE WIDEST POSSIBLE ADHERENCE; G) BREACHES OF STANDARDS OF OPERATION WOULD BE PUNISHED BY IMPOSITION OF CRIMINAL SANCTIONS OR OTHER ADMINISTRATIVE ACTION AT THE NATIONAL LEVEL.

2. IATA OBSERVER CLOSED PRESENTATION BY NOTING THAT THIS WOULD TRANSFORM THE PRESENT NOISE LIABILITY EXPOSURE FROM HE CLAIMED AN "UN-INSURABLE RISK" INTO AN INSURABLE ONE.

3. BEFORE IATA PRESENTATION THERE WAS A GENERAL DISCUSSION OF NOISE AND SONIC BOOM LIABILITY UNDER PRESENT CONVENTION. NETHERLANDS REP ADVISED THAT SONIC BOOM PROBABLY ALREADY COVERED, BUT THAT NOISE IS NOT AND THAT STATES SHOULD REMAIN FREE TO REGULATE NOISE.

4. FRENCH DEL COMMENTED THAT ARTICLE 1 APPLIES TO NOISE DAMAGE AND THAT WIDE LIABILITY COULD BE CATASTROPHIC FOR AIRLINES. RE SONIC BOOM, FRANCE SUGGESTED THAT LIABILITY OF OPERATOR SHOULD BE SPECIFICALLY RECOGNIZED IN ROME CONVENTION IN THAT SUCH A RISK COULD BE CONTROLLED BY OPERATING METHODS AND TECHNIQUES.

5. BELGIAN DEL STATED NOISE LIABILITY NOT PRESENTLY CONTAINED IN ROME CONVENTION EXCEPT WHERE IT IS REGARDED AS A RISK OF OPERATION.

6. ARGENTINE DEL OFFERED THAT NOISE WAS SPECIFICALLY EXCLUDED BY 1952 DRAFTERS ON BASIS OF LACK OF EXPERIENCE WITH THE PROBLEM AND THAT IT WAS LEFT TO NATIONAL REGULATION.

7. FOLLOWING IATA PRESENTATION NETHERLANDS REP INTERVENED TO SUGGEST THAT NOISE AND SONIC BOOM SHOULD BE CLEARLY KEPT OUTSIDE OF CONVENTION, AND THAT IT WAS DIFFICULT IF NOT IMPOSSIBLE TO FOLLOW IATA SUGGESTION OF NO LIABILITY WHERE THERE IS FAULT.

8. VARIOUS QUESTIONS POSED OF IATA OBSERVER TO BE ANSWERED TOMORROW.

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9. DEPARTMENT REQUESTED PASS SUBSTANCE THIS CABLE, PARTICULARLY

PARA 1, TO ATA GENERAL COUNSEL, JIM LANDRY.  
TOPPING

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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* UNCLASSIFIED

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